



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC - 2 2011

Colonel Alfred A. Pantano, Jr.
District Engineer
Department of the Army
Jacksonville District Corps of Engineers
Attn: Samantha Rice
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, Florida 33410

Subject: RBYC, LLC: 2008-01808(IP-SLR)

Dear Colonel Pantano:

This letter is in response to permit application number 2008-01808(IP-SLR) submitted by RBYC, LLC. The applicant proposes to expand an existing marina facility to accommodate mega yachts. The work would consist of dredging 228,480 cubic yards of material from 9.165 acres of submerged tidal bottoms to a minus 15 feet mean low water, and constructing a docking facility to accommodate 10 vessels, 100-feet in length. The purpose of the project is to construct a marina to service and repair mega yachts. The project is located in the Lake Worth Lagoon, adjacent to 2010 Avenue B, in Section 28, Township 42 South, Range 43 East, City of Riviera Beach, Palm Beach County, Florida.

The proposed project would impact a total of 9.165 acres of vegetated and unvegetated tidal bottoms which are Essential Fish Habitat (EFH) for federally managed fisheries and associated species as identified by the South Atlantic Fishery Management Council. This area is EFH for penaeid shrimp complex, red drum, reef fish, stone crab, spiny lobster, migratory/pelagic fish and snapper/grouper complex. Therefore, the U.S. Environmental Protection Agency considers this EFH to be aquatic resources of national importance (ARNI).

The EPA has reviewed the information contained within the public notice (PN). According to the PN, the proposed dredging would impact 5.506 acres of submerged aquatic vegetation (SAV), which includes *Halophila decipiens*, *Halophila johnsonii* and *Halodule wrightii*. Fin and shell fish commonly associated with seagrasses include Florida crawfish, stone crab, blue crab, penaeid shrimp, sea trout, gray snapper, red drum, pinfish, mullet and flounder. Moreover, SAV provides attachment sites for periphyton which in turn increases food value for the base of marine and estuarine food webs. SAV aides in stabilizing the shallow water submerged land which promotes water quality. SAV also performs important nutrient uptake functions which assist in the maintenance of water quality. For these reasons, the EPA considers SAV also to be ARNI.

In our letter dated November 8, 2011, the EPA requested that the applicant provide information on measures that are planned to avoid and minimize SAV and EFH impacts. The EPA can consider compensatory mitigation to SAV and EFH only after the applicant provides information which clearly demonstrates avoidance and minimization requirements have been satisfied. The EPA also requested the applicant provide benthic and bathymetric surveys of the site, overview drawings of the project, a

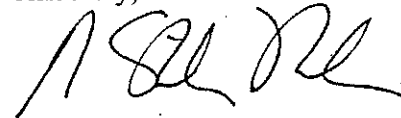
cumulative impact analysis and mitigation plans. Additionally, any disposal of dredged material in the Palm Beach Ocean Dredged Material Disposal Site will require a U.S. Army Corps of Engineers permit issued pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA). To date, we have not recieved a response to our November 8, 2011, letter.


Additionally, the Florida Department of Environmental Protection has not completed its Section 401 Water Quality Certification review of the proposed project. Section 401 Water Quality certification must be obtained for this project before final determination by the EPA under Section 404 can be made.

In conclusion, the EPA believes that the permit for the project cannot be approved as proposed, because it does not comply with the Clean Water Act (CWA) Section 404(b)(1) Guidelines, and further does not comply with Section 103 of the MPRSA. We believe that the proposed project may cause permanent degradation of SAV and EFH, which the EPA considers to be ARNI. Therefore, because the EPA has not been provided sufficient additional information to allow us to determine that the proposed project complies with the CWA Section 404(b)(1) Guidelines, we must conclude that it does not, and we therefore believe that a permit for the project cannot be approved, as proposed. This letter follows the procedures outlined in the 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, Elevation of Individual Permits, paragraph 3(b), regarding Section 404(q) of the CWA.

Thank you for providing an opportunity for the EPA to comment on this authorization. At this time, the EPA requests additional information to facilitate our evaluation of this project. We look forward to receiving more information from you. If you have any questions, please feel free to contact me, or have someone from your staff contact my technical staff person, Ron Miedema, at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 or by telephone at 561-616-8741.

Sincerely,



 Gwendolyn Keyes Fleming
Regional Administrator

cc: Ms. Victoria Foster, FWS

Ms. Jocelyn Karazsia, NMFS

Ms. Jennifer Smith, FDEP